

1 UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA

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5 THE HONORABLE STEPHEN V. WILSON, U.S. DISTRICT JUDGE PRESIDING

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7 GABRIEL FELIX MORAN, )  
8 Plaintiff, )  
9 vs. ) No. CV 2012-5808-SVW  
10 )  
11 THE SCREENING PROS, LLC, )  
ET AL., )  
12 Defendants. )  
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16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

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LOS ANGELES, CALIFORNIA

18

MONDAY, SEPTEMBER 10, 2012

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**NEW CASE STATUS CONFERENCE**

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DEBORAH K. GACKLE, CSR, RPR  
United States Courthouse  
312 North Spring Street, Room 402A  
Los Angeles, California 90012  
(213) 620-1149

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT  
COURT REPORTER DEBORAH K. GACKLE

1           **APPEARANCES OF COUNSEL:**

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4           **For the Plaintiff:**

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1                   **LOS ANGELES, CALIFORNIA; MONDAY, SEPTEMBER 10, 2012;**

2                   **2:40 P.M.**

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5                   THE CLERK: Item 9, CV 12-5808-SVW, Gabriel Felix  
6 Moran v. The Screening pros LLC, et al.

7                   Counsel, please state your appearances.

8                   MR. FOK: Good afternoon, Your Honor. Devin Fok for  
9 the plaintiff.

10                  MR. KIM: And also Joshua Kim.

11                  MR. SALTZ: Good afternoon, Your Honor. Michael  
12 Saltz on behalf of the Screening Pros, along with Colby  
13 Petersen.

14                  THE COURT: With regard to the motion to dismiss,  
15 with respect to the causes of action under IRCA, the  
16 state-based claims, I agree with the defendant that the statute  
17 is unconstitutionally vague, and so those claims will be  
18 dismissed.

19                  I disagree, however, with regard to the causes of  
20 action under the FCRA, the federal claims, under Section  
21 1681(e); and there the critical issue is when the seven-year  
22 period begins, and my view is that the seven-year period begins  
23 from the date of filing, which means it's not barred by the  
24 statute of limitations.

25                  And what remedies are available under Section 1681?

1                  MR. FOK: Yes, Your Honor. Under 1681, the remedies  
2 are \$1,000 for intentional violations, which is statutory  
3 damages, and actual damages for negligent violations. Also,  
4 with respect to the ICRA --

5                  THE COURT: Say that again now. There's statutory  
6 damages of a thousand dollars?

7                  MR. FOK: For intentional violations.

8                  THE COURT: What is the penalty for negligent  
9 violations?

10                MR. FOK: Actual damages, Your Honor.

11                THE COURT: Actual. So how -- what are actual  
12 damages in this kind of analysis? How do you compute actual  
13 damages?

14                MR. FOK: In these kind of cases, Your Honor, actual  
15 damages are hard to prove, and that's one of the reasons why --

16                THE COURT: I know, but what constitutes actual  
17 damages?

18                MR. FOK: By -- under Ninth Circuit, actual damages  
19 encompass emotional distress, encompasses loss of rent -- loss  
20 of opportunity to rent, as well as any other consequential  
21 damages. It does not necessarily have to be economic in  
22 nature.

23                THE COURT: I see. Here, how would you argue your  
24 damage claim?

25                MR. FOK: It would be primarily on the basis of

1 emotional distress and reputation damages.

2 THE COURT: Tell me how that would proceed.

3 MR. FOK: Well, my client had a good opportunity to  
4 procure affordable housing. As result of defendant's conduct,  
5 my client lost his opportunity to procure that housing, so --  
6 and securing affordable housing, securing stable housing, it's  
7 key to somebody's mental well-being and somebody's physical  
8 well-being as well.

9 THE COURT: Did your client pursue affordable housing  
10 after this incident with the defendant?

11 MR. FOK: He's constantly pursuing affordable  
12 housing. I'm not sure whether he's found affordable housing  
13 as -- as of today.

14 THE COURT: I see. How does the defendant see it?

15 MR. SALTZ: Thank you, Your Honor. As to your  
16 1681(e) ruling, you said something which didn't make sense with  
17 the argument that we had made. You said that you're counting  
18 the seven-year period from the date of filing, so that is the  
19 date of filing of the criminal case and not its ultimate  
20 disposition.

21 THE COURT: Right.

22 MR. SALTZ: Okay. And then you mentioned something  
23 with regard to the statute of limitations. We haven't argued  
24 statute of limitations on that. We thought it was just the  
25 seven-year and to-date section.

1                   THE COURT: So you're saying that there's -- that the  
2 claim had, notwithstanding the ruling on when the seven-year  
3 period runs under the statute, there's an independent  
4 statute-of-limitations argument?

5                   MR. SALTZ: Depending, yes, Your Honor. There's a  
6 two-year statute of limitations, but we didn't make that  
7 argument in the 12(b)(6) motion. What we made the argument on  
8 with regard to the seven-year statute from when it starts, we  
9 have -- or I fear that finding that under 1681(e) that the  
10 disposition date doesn't control will then create an actual  
11 conflict between California's credit reporting laws, which have  
12 been allowed to give more protection to the consumer. And in  
13 this instance, that interpretation of 1681(e) would make the  
14 FCRA turn Civil Code Section 1785.13 to be -- to give less  
15 protection to the consumer. Specifically, 1785.13 says that  
16 the seven-year antedation date -- if that is a word -- the  
17 seven-year time period antedates the report not by the filing  
18 but by disposition, release or parole, because the filing date  
19 could be at one point and then through a series of waivers or  
20 through appeals --

21                   THE COURT: You know something? I don't want to get  
22 into that with you because I don't think I agree with that  
23 argument. So let's get back to the question that I asked.

24                   What's your view of the way the plaintiff has  
25 structured its damage analysis?

1                  MR. SALTZ: Our view is there are no damages, in  
2 particular --

3                  THE COURT: That isn't the question. The plaintiff  
4 has -- I asked the plaintiff what kind of damages are  
5 available. The plaintiff responded by saying that there are  
6 emotional distress damages, that the cases support that, and  
7 that the plaintiff has been unable to get affordable housing as  
8 a result of this report; and, therefore, the fact that the  
9 plaintiff has been unable to get affordable housing has caused  
10 the plaintiff emotional distress. Forgetting for the moment  
11 the merits of that, is that an argument that's structurally  
12 correct?

13                MR. SALTZ: No, Your Honor. There has to be actual  
14 damages under the FCRA. If they prove an intentional  
15 violation, there is a statutory penalty of \$1,000. If it's a  
16 negligent violation, then there's no statutory penalty;  
17 however, they do have to prove actual damages. In this  
18 complaint --

19                THE COURT: Aren't you allowed emotional distress?

20                MR. SALTZ: The complaint doesn't plead emotional  
21 distress.

22                THE COURT: Well --

23                MR. SALTZ: It does not say that any were suffered.  
24 It says that they were entitled to a \$10,000 statutory penalty,  
25 and that they suffered actual damage of spending money, time

1 and energy in having to clean up the report.

2 THE COURT: But now they seem to be saying that they  
3 suffered emotional distress.

4 MR. SALTZ: Right, which is not in the complaint.

5 THE COURT: You know, how hard is it to change the  
6 complaint? I mean, you know, this is not one of those Gillette  
7 commercials.

8 MR. SALTZ: I understand, Your Honor. In this  
9 particular instance, we have two criminal court cases that were  
10 reported: One that falls within your reading of the seven-year  
11 time period and one that falls outside of it. So the question  
12 is could he be damaged by the one that was outside of it when  
13 it was reported along side the one that was inside of it. So  
14 in our position, there is -- unless they can get the people  
15 that have denied him housing based upon his credit report and  
16 his criminal report to say that but for the one criminal case  
17 that was reported that was outside of the reading of 1681(e),  
18 then -- and --

19 THE COURT: One minute, one minute. Was the criminal  
20 event that was within the seven-year period the  
21 under-the-influence charge of a controlled substance or the  
22 other charge?

23 MR. SALTZ: The one -- the criminal event, which was  
24 case No. 188935, that had a filing date of May 16, 2000, had a  
25 disposition date of March 2nd, 2004. That was the under the

1 influence.

2 THE COURT: Right.

3 MR. SALTZ: The second case that was reported was  
4 case No. 217842; the filing date of that case was June 4th,  
5 2006, consisting of three counts, one of burglary in the second  
6 degree; one of forgery --

7 THE COURT: So that's not a violation.

8 MR. SALTZ: That's not a violation under --

9 THE COURT: So your argument is that could a  
10 reasonable fact finder conclude that the plaintiff suffered  
11 emotional distress or was adversely affected by the -- by  
12 knowing of the barred under-the-influence conviction when the  
13 defendant knew about the other convictions.

14 MR. SALTZ: Correct.

15 THE COURT: And the other convictions were for what  
16 again?

17 MR. SALTZ: Three counts: First was burglary in the  
18 second degree; second for forgery; and third embezzlement,  
19 theft by a non-caretaker by an older or dependent adult.

20 THE COURT: And you're saying that even in the  
21 context of summary judgment, that that's not -- the plaintiff's  
22 position is not sustainable until the plaintiff offers more  
23 evidence, which would be along the lines that it would affect  
24 someone in defendant's position.

25 MR. SALTZ: Correct.

1                   THE COURT: I see. You have to make a summary  
2 judgment motion.

3                   MR. SALTZ: That's what we intend to do, Your Honor.

4                   THE COURT: When do you intend to do that?

5                   MR. SALTZ: Well, we have just got the case assigned  
6 here. This is our first status conference, and we immediately  
7 filed our 12(b)(6) motion. So now we will be engaging in  
8 discovery based upon the remaining causes of action.

9                   THE COURT: Why do you have to discover anything?  
10 Why wouldn't you be able to file a summary judgment motion just  
11 on the basis of what you said? I mean, it seems to me the  
12 plaintiff might want to have some discovery, but why you? You  
13 seem to know where you're going.

14                  MR. SALTZ: We do, Your Honor. The problem, however,  
15 is we don't know what they're going to say in response, and in  
16 this particular instance --

17                  THE COURT: What could they say in response? What is  
18 the best they could say? The best they could say would be,  
19 Well, no, a reasonable person in defendant's position could be  
20 influenced by that barred conviction under the influence. That  
21 being under the influence is different than forgery or  
22 embezzlement. That is something that is more pernicious, and  
23 that would affect a defendant more than mere burglary, mere  
24 embezzlement -- what was the other one?

25                  MR. SALTZ: Theft from an elder --

1                   THE COURT: Mere theft. Those are, you know, not as  
2 telling as under the influence. Was the under the influence a  
3 driving charge?

4                   MR. SALTZ: We don't know, Your Honor. That case was  
5 ultimately dismissed, and it was reported as a dismissed case.  
6 It's the other case to which --

7                   THE COURT: What was the under the influence case,  
8 was that driving?

9                   MR. FOK: No, it was under the influence of drugs,  
10 Your Honor. In possession. He had a drug addiction.

11                  THE COURT: Oh, I see.

12                  MR. FOK: So there is --

13                  THE COURT: You have to stand up when you address the  
14 court.

15                  MR. FOK: I apologize, Your Honor.

16                  There is absolutely a causation issue. If I was a  
17 landlord, I'd be less inclined to have somebody who uses drugs  
18 in my premises as opposed to somebody who committed theft.

19                  THE COURT: But on the other hand, you would say a  
20 reasonable landlord would say, Okay, this new tenant he has --  
21 was it a conviction?

22                  MR. SALTZ: Yes, he pled guilty.

23                  THE COURT: He pled guilty to burglarizing some  
24 place. He pled guilty -- he didn't?

25                  MR. FOK: He did not, Your Honor. He actually --

1 this is the issue with the background check as we have it right  
2 now, because we're going to submit evidence to the effect that  
3 under the criminal justice system, D.A. routinely charges  
4 somebody who is arrested with everything they possibly can.

5 THE COURT: What was he convicted of?

6 MR. FOK: He was only convicted of theft. Everything  
7 else was dismissed.

8 THE COURT: And was it a felony or misdemeanor?

9 MR. SALTZ: Misdemeanor, Your Honor.

10 MR. FOK: It was a misdemeanor.

11 MR. SALTZ: It was part of a plea deal.

12 THE COURT: What was the -- did the report itself  
13 describe what he was charged with and what he pled to?

14 MR. SALTZ: Yes, Your Honor. It specifically  
15 identified each count, and it showed which counts were  
16 dismissed as part of plea deal, and it showed that for count  
17 three he plead guilty, and it showed the sentence.

18 THE COURT: What was the sentence?

19 MR. SALTZ: Sixty days jail, three years court  
20 probation and a \$500 fine.

21 THE COURT: What about the under the influence?

22 MR. SALTZ: It showed dismissed.

23 THE COURT: In other words, that wasn't even -- he  
24 never pled or --

25 MR. SALTZ: Correct. Pursuant to the California

1 statute, this was reported within seven years of its  
2 disposition.

3 THE COURT: What happened in the under the influence?  
4 Was he ever prosecuted for that?

5 MR. FOK: No, the charges were never -- there were  
6 no -- well, I want to backtrack. There were charges, but my  
7 client was never prostituted on those charges.

8 THE COURT: Basically someone in the defendant's  
9 position would know that a charge of being under the influence  
10 was filed against your client, that that charge was dismissed,  
11 and that your client -- that's something the defendant should  
12 not have known, under my view of the statute -- should not have  
13 been in the report, and that what could have been in the report  
14 was the theft disposition. So don't we know all we have to  
15 know for the summary judgment right now?

16 MR. FOK: Your Honor, there are two issues with that  
17 actually with the under-the-influence charge. There are two  
18 ways one can view that charge: Either a dismissal without  
19 prosecution or a dismissal after prosecution and conviction and  
20 following probation and expungement. Under the California's  
21 expungement statute, an expungement is considered a dismissal  
22 pursuant to Penal Code 1203.4, which is the exact same mistake  
23 that the defense counsel made in their moving papers: They  
24 assumed that it was a dismissal following expungement. That's  
25 not what happened here. What happened was a straight-up

1 dismissal. My client was never prosecuted --

2 THE COURT: Well, look, you could bring this to a  
3 decision through a summary judgment motion, and if the court  
4 feels that a reasonable jury could find for the plaintiff, then  
5 obviously summary judgment would be denied. If the court feels  
6 that that isn't the case, then the motion will be granted. So  
7 that's -- I don't know what discovery is about. What do you  
8 intend to discover from each other? It seems to me you know  
9 everything right now.

10 MR. SALTZ: We don't know everything, Your Honor.

11 There are -- because there are three FCRA causes of action:  
12 There's the one with regard to the timeliness; there's one with  
13 regard to inaccurate information, which is mutually exclusive  
14 from the timeliness; and then there is another with regard  
15 to the -- under 1681(i)(A) which deals with the letter from the  
16 attorney attempting to dispute information.

17 MR. FOK: Your Honor, before you set a date for the  
18 hearing --

19 THE COURT: Yes.

20 MR. FOK: -- there is a critically important  
21 procedural item that we need to take care of, which is if the  
22 court is inclined to find any of the statutes unconstitutional,  
23 including the California Investigative Consumer Reporting  
24 Agencies Act, notice must be given to the state attorney  
25 general's office prior to the court's finding. That's under

1 Rule 5.1 --

2 THE COURT: What rule is that, Federal Rule --

3 MR. FOK: Federal Rule 5.1, Your Honor.

4 THE COURT: I see. Let's say I do that. What --

5 MR. FOK: There is a statutory 60 days that the court  
6 must wait after giving notice before he can actually enter  
7 judgment in defendant's waiver with respect to the  
8 constitutionality of the statute.

9 THE COURT: Let's say that is accomplished. I'm just  
10 proceeding on the basis of the other claims.

11 MR. FOK: Yes.

12 THE COURT: Thank for informing me about that.

13 Trial will be Tuesday, November 20th, at 9:00 a.m.  
14 Pretrial will be on the day before, Monday, November 19th at  
15 3:00 o'clock. Thank you.

16 MR. SALTZ: Your Honor, do you have a date for  
17 summary judgment --

18 THE COURT: We can hear the summary judgment -- file  
19 it. We set a date whenever you file it. File it tomorrow, end  
20 of the week, whatever you want, and then the clerk just sets  
21 the schedule according to date that you filed it.

22 MR. SALTZ: Thank you, Your Honor.

23 MR. FOK: Thank you, Your Honor.

24 (Proceedings concluded at 3:00 p.m.)

25 - - - - -

1 C E R T I F I C A T E  
2

3 I hereby certify that the foregoing is a true and  
4 correct transcript from the stenographic record of  
5 the proceedings in the foregoing matter.

6

7 September 18, 2012

8 /S/ \_\_\_\_\_

9 Deborah K. Gackle  
10 Official Court Reporter  
CSR No. 7106

Date

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| 3           | 310-430-9933 [1] 2/8<br>310-446-9900 [1] 2/21<br>310-446-9909 [1] 2/22<br>312 [1] 1/24<br>323-563-3445 [2] 2/8 2/13<br>323-563-3575 [1] 2/13<br>3445 [2] 2/8 2/13<br>3575 [1] 2/13<br>3:00 [1] 15/24<br>3:00 o'clock [1] 15/15  |  |
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**D**

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